85 - 1854

Supreme Court, U.S.
FILED
NOV 26 1985
JOSEPH F. SPANIOL, JR.
CLERK

CASE NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1984

IRA BANKS

Petitioner,

v.

FINLEY-SELIGMAN & LATZ, INC.,

Respondent.

On Writ Of Certiorari to the
United States Court Of Appeals
For The Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

Ira Banks
6507 North 84th Street
Milwaukee, Wisconsin 53224
(414)353-8476

APPENDIX

EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

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UNITED STATES COURT OF APPEALS

For The Seventh Circuit

Chicago, Illinois 60604

Submitted August 22, 1985

September 4 , 1985

Before

HON. Walter J. Cummings, Chief judge

HON. Harlington Wood. Jr. Circuit judge

HON. Jesse E. Eschbach, Circuit judge

Ira Banks, Plaintiff-Appellant, vs. Finley-Seligman & Latz, Inc., Defendant-Appellee.	Appeal from the United States District Court For the Eastern District of Wisconsin
No.85-1188	No. 80-C-1056 John W. Reynolds Judge.

ORDER

Plaintiff-appellant Ira Banks appeals the district court order of January 10,1985 dismissing his employment discrimination action aganist defendant-appellee, Finley-Seligman & Latz, Inc., We affirm for the reasons explained below.

I.

Banks, a black jeweler, filed two employment discrimination claims with the Equal Opportunity Commission aganist the defendant,his employer. The first claim alleged that the defendant,s pay system was discrimintory because it cause him to be paid less than certain white employees.The Second claim alleged that Banks was discharged by the defendant in retaliation for protected Title VII activity.

After preliminary examination of the briefs the the court notified the parties that it had tentatively concluded that oral argument would not be helpful to the court in this case. The notice provided that any party might file a "statement need of oral argument" See Rule 43(a), Fed. R. App. P.;Circuit Rule 14(f).No such statement havebeen filed, the appeal has been submitted on the briefs and record.

See 42 U.S.C. 2000e-3 Klein v. Trustees of Indiana University, No.84-2124.Slip op.(June 20, 1985) Mozee v. Jeff boat,Inc. 746 F.2d 365 (7th Cir.1984). McCluney v. Jos. Schlitz Co. 728 F. 2d 924 (7th Cir. 1984)

After receaving right to sue letter on both claims, Banks filed suit in federal district court raising both claims. The district court granted summary judgement for the defendant on both claims. On appeal we affirmed by unpublished order the grant of summary judgement on both claims.that the defendant,s pay structure was discriminatory,Banks v. Finley-Seligman & lotz, inc. No.83-2981, unpublished order (7th Cir. Oct. 29,1984).We reversed and remanded for further proceeding, however,with respect to the claim that Banks was terminated in retaliation for fileing a claim aganist the defendant.On remand the District court held a lengthy evidentiary hearing at the conclusion of which it dismissed Banks claim, finding that Banks had failed to establish that he was terminated in retaliation for filing a discrimination claim aganist the defendant. it is from this decision that Banks appeals.

II.

Construing Banks, pro se briefs liberally, Hains v. Kerner, 404 U.S. 519,520-21 (1972); Bates v. Jean, 745 F. 2d 1146, 1150 (7th Cir. 1984),Banks contend

the district court erred in concluding that he was not discharged in retaliation for filing a discrimination claim. "To establish a prima facie case of retaliatory discharge under 42 U.S.C. 2000e-3, The plaintiff Must show: (1) he opposed an employment practice that was unlawful within the meaning of Title VII; (2) he suffered an adverse action by his employer; (3) because of his opposition or participation"(footnote omitted)Klein, slip op at 7; Rucker v. Higher Education Aids Bd., 669 F. 2d 1179, 1182. The plaintiff must additionally establish that the employer "would not have taken the adverse action, but for, his opposition or participation " Klein ,slip op. at 8 citing McCluney v. Jos. Schlitz Brewing Co., 728 F. 2d 924, 928 (7th Cir. 1984).

The Prima facie proof annalysis set forth in Mc.-Donnel Douglas Corp. v. Green,411 U.S. 792 (1973) is applicable to retaliatory discharge claims, See Texas Department of Community v. Burdine, 450 U.S. 248, 235 n.5 (1981)(The McDonnell analysis is flexible and adaptable to different fact situations);Klien, slip op. at 7, n. 3. Once the plaintiff establishes a

prima facie case of employment discrimination a rebuttable presumption of discrimination arises and the burden then shifts to the defendant to rebut the discrimination by articulating a legitmate, nondiscriminatory reason for its action. McDonnell Douglas, 411 U.S. at 802. If the defendant successfully rebuts the presumption of discrimination that the alleged reason for the employment action was merely pretextual. Id.

In the present case, we vacated the award of summary judgement on the retaliation claim and remanded this case to the district court for further proceeding.On remand, Banks tried his retaliation claim before the district court and at the conclusion of the trail, the district court entered judgement for the defendant,finding that Banks had failed to demostrate that he was discharged in retaliation for fileing a complaint aganist the defendant."In this Title VII case,our ultimate task is to detremain whether the (plaintiff have) proven that the defendant have Discriminated aganist(Them)"moze 746 F. at 369,Citing Espstein v. Secretary, 739 F.2d 274,278(7th Cir.1984).

The record reflect that Banks was hired by defendant as a jeweler in 1972, that Banks filed a discrimination claim aganist the defendant relating to the methods of payment on November 28, 1978.,and that Banks left emlpoyment with the defendant on March 28, 1980, 16 months later.Banks then filed his second discrimination claim, alleging that he had been discharged in retaliation for filing his discrimination claim 16 months. earlier.During this sixteen month period,Banks work assignment and hours remaind the same.On March 28, 1980, a dispute arose over repairs completed by Banks on a braclet.Freinik, Banks ,Supervisor, requested Banks to redo repairs to the bracelet because they had not been completed correctly the first time.The defendant policy in effect at the time required all employees to redo work again for various reasons, regardless of whose fault it was. (this order suggest ,See transcript at 104 this case)

Basically, this case hinges on question of credibility which we are heasitant to second guss on appeal absent clear error.Anderson v. City of Bessemer City, __U.S.___,105 S.Ct. 1504, 1512-13 (1985);

In re Lemmon & Co., Inc.,742 F. 2d 1064, 1070 (7th Cir. 1984); Luedtke Eng. Co. v. Ind. Limestone Co., 704 F. 2d 598, 601 (7th Cir. 1984); Walsh v. Brewer, 733 F. 2d 473, 477 (7th Cir. 1984).Ample evidence supported the district court,s determination that Banks was not discharged in retaliation for filing a discrimination claim. Sixteen months passed between the time that Banks filed his discrimination claim and his sudsequent termination of employment with the defendant. Banks himself was unable to point to overt instances of harrassment or discrimination arising from the discrimination charge which he filed.1 Although Banks testified that Sadow and Freinik testified otherwise.As such ,we agree with the district court that Banks failed to establish that he was terminated in retaliation for filing a discrimination claim aganist the defendant.

AFFIRMED.

The COURT:now why do you think one year and four months later, when you were discharged that you were discharged for filing that complaint on November 28, 1987? Why do you think that
A.Why do I think it? Simply because at the time from November of 78, until I was terminated,The type of work they needed done,I was the only one doing it. And this was in regards to their sales.

UNITED STATES COURT OF APPEALS

For The Seventh Circuit

Chicago, Illinois 60604

September 26,1985

Before

Hon. Walter J. Cummings, Chief Judge

Hon. Harlington Wood, Jr. Circuit Judge

Hon. Jesse E. Eschbach. Circuit Judge

Ira Banks, Plaintiff-Appellant.	) Appeal from United States District Court for the Eastern District Of Wisconsin.
NO. 85-1188	)
Finley-Seligman & Latz, Inc., Defendant-Appellee.	) No.80-C-1056 John W. Reynolds Judge

ORDER

On consideration of the petition for rehearing filed in the above-entitle case by plaintiff-appellant, all of the judges on the panel have voted to deny a rehearing .Accordingly,

IT IS ORDERED that the afrosaid petition for rehearing be, and the same is hereby

DENIED.

J.A.(8)

6507 North 84th Street
Milwaukee, WI 53224
February 21, 1983

Barry L. Chaet. Esq
811 East Wisconsin Avenue
Suite 311
Milwaukee,WI 53202

RE: Ira Banks vs. Finley-Seligman & Larz, Inc.,
80-C-1056

Dear Mr. Chaet;

Anticipating the cooperation of defendant and to avoid the necessity of a formak motion.I Ira Banks request you provide me with document that are clearly readable an every affort is made on your part to insure that alldocument that is forwarded to me, by the defendant. Is not obscure. I request you provided me with copies relating to the following:

1. A complete copy of my personal file, as to any documents excised or withheld, please itemize and index including or reason asserted.

2. With respect to my jod performance and termination, provide all defendant documents includeing,but not limited to, all communication such as correspondence, memoranda ,notes,evaluation,opinions,ect,to documents excised or with held,please itemize and

index including privilege or reason asserted.

3. Adhere to the request, by Ira Banks, for REQUEST FOR PRODUCTION PURSUANT TO FED. R. CIV. P. 34 .

thank you very much.

Sincerely

Ira Banks

RECORD 34.

IN THE UNITED STATES DISTRICT COURT
For The
EASTERN DISTRICT OF WISCONSIN

Re: Ira Banks
vs.
Finley-Seligman & Latz, Inc.,
Case No. 80-C-1056

REQUEST FOR PRODUCTION

To: Mr. Barry Chaet
811 East Wisconsin Ave.
Suite 311 Juneau Squeare South
Milwaukee, WI 53224

Date of Request: Feb. 21, 1983
Date of Compliance: March 23, 1983
Place of Production: 6507 North 84th Street
Time of Compliance: 10:00 O Clock AM.

REQUEST FOR PRODUCTION
PURSUANT TO FED. R. CIV. P. 34

You are hereby requested pursuant to Fed. R. Civ. P. 34 to produce for inspection and copying at the above designated place , date and time all of the following materaials which are the possession, custody or control of yourself, your attorney, or any agents of your attorney or any agents of your attorney or of yourself.

The word"document" as used herein, includes the orginal or copies of any written , typed, printed,

recorded or graphic matters however produced, including, but not limited to, pamphlets, periodicals, circulars, bulletins, letters, telegrams, correspondence, memoranda, notes, minutes, records, vouchers, purchase orders, sales orders, quotations, invoices, bills, estimates, reports, proposals, ledgers, interoffice communications, drawings, blueprints, plans, specifications, brochurs, tear sheets , articles , agreements , contracts, checks, tape recodings or transcriptions thereof,or any other writings, however produced or reproduced which are in your actual or contructive possession or control, or any agent, attorney or affiliate thereof. Whne a document is requested it is the original which is requested, and copies should be produced only when the original are not avaiable.

The word"photograph" as used herein includes all prints, including contact sheets, made from any negatives; all negatives regardless of whether said negatives have been used to make prints; all exposed film regardless of whether it has been developed into motion pictures, developed or undeveloped, along with any type of video tape.

6507 North 84th Street
Milwaukee, WI 53224
March 18th, 1983

The Honorable John W. Reynolds
United States District Court
Eastern District Of Wisconsin
471 Federal Building
517 East Wisconsin Avenue
Milwaukee,WI 53202

Re:Ira Banks — Notice Of Motion
vs.
Finley-Seligman & Latz,Inc.,
80-C-1056

Dear Judge Reynolds.

pursuant of a motion filed by defendant, plaintiff file a responce a informed motion, that was recently filed by defendant, plaintiff was not aware of any motion until plaintiff contacted the defendant attorney to request a date for depose two persons, I was informed that a motion was filed lately for a protective ordre of documents an Mr. Robert Sidow.

Plaintiff states that a motion for summary judgment was filed by defendant approxi date 29th,day of June 1982.Approxi, four years after the defendant filed a document with E.E.O.C. Defendant exhibit A stateing salaries of jewelers employed by the defendant at 101 west wisc.Ave. Milwaukee.Repair dept.

The defendant exhibit is a commission report dating from July 1977- Nov.1978.The defendant have failed to show a full explanation of how the salaries in the commission report came about.

Plaintiff presented documents approxi, date Feb. 7, 1983 Exhibit B.C. & D.Plaintiff exhibits are in direct disagreement with defendant Exhibit A. Plaintiff Exhibit B,C, & D. Are linked to the commission report that the defendant have presented to E.E.O.C. Four years ago. The commission report is dated 12-20-78.Plaintiff have repeated a request for document from defendant, the defendant have repeatedly illustrated prejudice towards plaintiff,plaintiff latest request for document dated Feb.21st 1983.Which is on file with federal court.

position is that the request for document From the defendant should not be delayed based on a summary judgement or other motion motion that are in opposition to plaintiff request,their was,ent a motion for summary judgement at the time the commission report was filed with E.E.O.C.

Plaintiff is now fileing a motion in pursuant

of plaintiff position on all suporting motions filed approxi, Feb. 7th 1983.

PLAINTIFF MOTION IS

(1) Plaintiff motion of documents from plaintiff be immediately complyed by defendant. pursuant of requested dated ,Feb. 21st 1983.

(2) Plaintiff motion to depose Mr. Robert Sadow presently employed with finley-seligman & latz, Inc., at 101 west wisc, ave. Milwaukee.

Date of request to take deposition is April 13th, 1983. Time, 10:00 O Clock AM.

Place.6507 north 84th Street Milwaukee,WI 53224 By Ira Banks before a Notary Public.

(3) Plaintiff motion to depose Mr. Gerhard Freinik W132 N 6011 March Rd. Man Fls. A former employee of finley-seligman & latz, inc., at 101 west wisconsin ave.Milwaukee. Position was manger.

Date requested to take deposition is April 13th, 1983.Time, 11:30 O Clock AM.

Place. 6507 North 84th Street Milwaukee,Wi Zip 53224.By Ira Banks before a Notry Public.

RECORD 36
Document Notarized.

(CHARGE OF DISCRIMINATION)
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION AND
WIS.EQUAL RIGHTS DIVISION (State or local Agency)

Name ..... Ira Banks
Street Address ...6507 North 84th Street Mil,WI.
Name Of Employer..... Finley,Incorporated
Street Address ...101 W. Wisc. ave. Mil, WI.
Race ..... Black

The Particulars Are:

I. Personal Harm- I have been employed by the above named respondent as a jeweler for almost Six(6) years At the present time, Watchmakers employed by the Respondentare paid Thirty(30%) of the retail value of the work they do, while I am paid on a piecework basis, as a result the Watchmakers receive considerably more pay for the amount of work done than I receive.I have asked my Supervisor,Gary Freinik, to put my pay on the same basis as that of the Watchmaker, but he has refused to do so.

II. Respondent,s Reason for adverse Action.Mr. Freinik has told me that he can not pay me thirty percent (30%) of retail because much of my work is with gold and precious stones, which have a very high initial cost compared to the amount of work invoned on my part.

III. Discrimination Statament-Ibelieve that the respondent,s has discriminated aganist me because of

my race,Black, for the fellowing reasons:

a. I am the only jeweler employed at the Respondent,s facility.All of the Watchmakers at this facility are White.

b. The Respondent employed two(2) Jewelers until May, 1978 .Mr. Freimik recently told me that production of jewelry has dropped only one percent(01%) since then. He also told me I am Produceing more than Watchmakers.

c. Even if Mr.Franik,s statement about the price of gold and precious stones is true i could be paid a proprotion of the retail price after the cost of the stones was deducted.Ibelieve that the amount of work I do on gold is sufficient to justify giving me a proportion of the retail value. There are also others ways of bringing my pay up to a comparable level.

d. I have had previous problems with the respondent because of my race. For example, after I had worked for the Respondent for some time at an hour wage,and was producing enough to justify a different method of payment the Respondent attempted to keep me at an hourly wage. This was not done to White Employees.

Dated: 11-28-1978. Charge No. 055790245

RECORD 14. Exhibit A.

(CHARGE OF DISCRIMINATION)

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION AND
WIS. EQUAL RIGHTS DIVISION(State or local Angency)

Name.....Ira Banks
Street Address ...6507 North 84th Street Mil,WI.
Name Of Employer ... Finley, Inc., Seligman & Latz, Inc.,
Street Address...101 w. Wisc.ave. Mil, WI
Race.....Black
Retaliation 704(a)
Date Most Recent Or Continuing Discrimination took place(Month, Date, and Year) March 28,1980.

The Particulars Are:

1. PERSONAL HARM: I have been employed by the above naned Respondent as a Jeweler for eight (8) years. On March 28, 1980 I was Discharged from that position.

2. RESPONDENT,S REASON FOR ADVERSE ACTION: Mr.Robert Sadow ,Manager,Stated That I was discharged for not doing special jobs that Gary Freinik would give me to do.

3.DISCRIMINATION STATEMENT: I believe I have been discriminated aganist because of my race(Black) for the Following reasons.

a. On November 28,1978, I filed a charge No. (05579024S) of discrimination aganist the adove named respondent and I believe that My discharge on March28, 1980, was in retaliation for filing

a previous charge with the Commission.

b. The special jobs that I referred to above were jobs assigned to me that I had previously done and was required to do again for certain other repairs that were not indicated on the original job order. These special repair jobs were time consuming and without compensation for the time I spent doing them. Ifeel That This was unfair and discriminatory because the error was not on my part in the beginning.

Dated: 4-3-1980 Charge No. 055801396

RECORD 14 Exhibit B.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT Of WISCONSIN
Office Of The Clerk

RECORD TRANSMITTAL LETTER

July 31,1985

Thomas F. Srubbe, Clerk
United States Court Of Appeals
For The Seventh Circuit
219 South Dearborn Street
Room 2722
Chicago , IL 60604

Re: Ira Banks vs. Finley-Seligman & Latz, Inc.,

Trail Court Docket No. 80-C-1056

U.S. COURT OF APPEALS DOCKET No.85-1188

Dear Strubbe:

I am sending you herewith the oribinal/supplemental (delete in applicable entry) record on appeal. It consist of the following.

1 volumes of Pleading

1 volumes of Transcripts

Exhibits: 1 envelop

Please acknowledge date of recipt of the above materials on the attached copy of this letter.

SBN/

Very truely your,s
Sofron B. Nedilsky
Clerk of Court

cc: Ira Banks
Barry L. Chaet

FINE JEWELRY

Gimbels

WATCH REPAIR

97169 CC

2/14/80

APPROX. DUE: 2/27/80

ESTIMATED PRICE: $

OVER TIME • 9HR. S • NOT PAID FULL DAYS WORK • NOT PAID • NO LUNCH BREAKS

REC'D: 2/14/80 APPROX DUE: 2/28/80 97169 CC

PHONE: 475-8788 H 332-4533

NAME: R. R. Kania

STREET: 2925 N. Downer

CITY: Milw. Wis. 53211

R

DESCRIPTION: 14K Lenco bracelet

CONDITION: New $970

ESTIMATE X

FINE JEWELRY X

COST. JEWELRY

WATCH REPAIR

ENGR.

RESTR.

TIMEX

NO GUART.

HOLD

CLERK: MJR

Needs 2 links to make longer or extender for that length.. Make plate Ask Gary Talk to Engineering EST. 2/15 or EST. Lengths. What's the cost?

CUSTOMER SIGNATURE

TOTAL $

EVIDENTIARY Hearing EXH. 3, pt 1

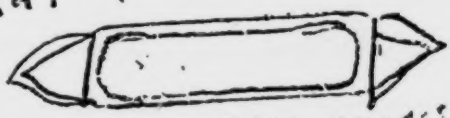
MILW 22

1-10-85

J.A.21

97169cc

Instruction say 2 links bar was completly finish every
Bar was completly finish every
For polishing spent any more



Craig cc say bar was finish
3 links links 2'x 6 mm Bar stock
1 x 3 mm Frame made Around
links measure 2 x 6 bar stock

3/4 inches long

stock given time by Fromit
For exact lent

2 link harmonic 1 + vertical
Bracket with a quick release

Exhibit 1A

J.A.(21a)

BAR WORKING INTO BRACKET

DELAY CALL

Initial	Store	Job Nu.
	Welding	14x50 Dew

Customer Phone _____ 4 inch Factor solid

Customer Name _____

Customer Address This Drawing Is Side

OF Bracket That Was Made.

Customer called Which Is exactly The size Of

Card sent A Drawing Done By

Called by The Engineer Craig Capel

Job will be done Cut + Total Length Of

We will call Bracket that was made 9 4

Reason Inches Long. This Agreement

Part on order Duplicate Between Gary

Need time for testing Mark & Because Of

Must go to factory The Length Of Bracket 9

Can't meet date We Said It Should Have Been

Other: 3 Inches Long. Craig Was In

Any Office At the Time Of Drawing-

ment. 3-7-80 AM

Dept. 787

J.A, (21b)

LO 187
Rev. 1/80) ●

EXHIBITS

Banks

vs.

Finley Seligman

CAUSE NO. 80-C-1056

DATE	Identification No.	Identification Witness	DESCRIPTION	OFFERS OBJECTIONS RULINGS EXCEPTIONS
1/10	1	Banks	Photocopy of worksheet ~~envelope~~ envelope	O+R
"	2	"	"Fine Jewelry Repair" price sheet	O+R
"	3	"	points - wage sheet	O+R
"	4	"	~~Description sheet~~ point system sheet	O+R
"	5	"	2 rings taped to sheet	O+R
"	6	"	work category sheet	O+R
"	7	"	1st EEOC charge	O+R
"	8	"	EEOC charge of retaliation	O+R
"	9	Sadow	3/26/80 summary of ruling	O+R
"	10	"	~~Cross~~ Cross's	objection overruled O+R
"	11	"	~~Cross~~ Cross's	objection overruled O+R
"	12	Frank.	Memo re events of 3/25/80	O+R

§ 779.213 What is a common business purpose.

Generally, the term "common business purpose" will encompass activities, whether performed by one person or by more than one person, or corporation, or other business organization, which are directed to the same business objective or to similar objectives in which the group has an interest. The scope of the term "enterprise" encompasses a single business entity as well as a unified business system which performs related activities for a common business purpose. What is a "common business purpose" in any particular case involves a practical judgment based on the facts in the light of the statutory provisions and the legislative intent. The answer ordinarily will be readily apparent from the facts. The facts may show that the activities are related to a single business objective or that they are so operated or controlled as to form a part of a unified business system which is directed to a single business objective. In such cases, it will follow that they are performed for a common business purpose. Where, however, the facts show that the activities are not performed as a part of such enterprise but for an entirely separate and unrelated business, they will be considered performed for a different business purpose and will not be a part of that enterprise. The application of these principles is considered in more detail in Part 776 of this chapter.

§ 779.241 Selling.

The statutory definition of the term "sale" or "sell" is quoted in § 779.15. As long as the employee in any way participates in the sale of the goods he will be considered to be "selling" the goods, whether he physically handles them or not. Thus, if the employee performs any work that, in a practical sense is an essential part of consummating the "sale" of the particular goods, he will be considered to be "selling" the goods. "Selling" goods, under section 3(s) has reference only to goods which "have been moved in or produced for commerce by any person," as discussed in §§ 779.242 and 779.243.

§ 779.320 Partial list of establishments whose sales or service may be recognized as retail.

Antique shops.
Auto courts.
Automobile dealers' establishments.
Automobile laundries.
Automobile repair shops.
Barber shops.
Beauty shops.
Bicycle shops.
Billiard parlors.
Book stores.
Bowling alleys.
Butcher shops.
Cafeterias.
Cemeteries.
China, glassware stores.
Cigar stores.
Clothing stores.
Coal yards.
Confectionery stores.
Crematories.
Dance halls.
Delicatessen stores.
Department stores.
Drapery stores.
Dress-suit rental establishments.
Drug stores.
Dry goods stores.
Embalming establishments.
Farm implement dealers.
Filling stations.
Floor covering stores.
Florists.
Funeral homes.
Fur repair and storage shops.
Fur shops.
Furniture stores.
Gift, novelty and souvenir shops.

AFFIDAVIT

STATE OF WISCONSIN)
)SS
COUNTY OF MILWAUKEE)

I, Robert Sadow,being duly sworn state:

1. I am the vice president of Finley Depertment,Inc. located in the Gimbels Departmnt Store at lol West Wisconsin Avenue.Finley Department, Inc. is a company that is engaged in the business of selling and repairing fine jewelry,Watches and similar items.I am responsible for and in charge of the operations of Finley,s including the hiring and fireing of personnel and determining wages for personnel. I have held this position at Finley,s for the past 27 years.

2. On March 14, 1972, I hired Mr. Banks while he was attending the Milwaukee Area Technical School (MATC) under a Wisconsin state manpower poverty program. (Mr.Banks, employment application is attached hereto as Exhibit 1.) Mr. Banks was employed as an apprentice jeweler

under a State of Wisconsin apprenticeship jeweler program, as set up by the State of Wisconsin Division of Apprenticeship and training.(A description of the apprenticeship program is attached as Exhibit 2.) Throughout Mr. Banks apprenticeship at Finley,s he was compensated in accordance with the salary schedule that was provided for inthe apprenticeship program.(See Exhibit 2).

3. Both watchmakers and jewelers work on a draw against commission earned between the two positions are different.This difference is due to inherent dissimiarities between the two positions, the amount of time spent on a given assignment,and most importantly,the cost of materails used to repair the item.Also,the jobs entirely different skills.

Because the cost of materails used in watch is relatively low,and because of the greater time it usually takes to repair a watch,payment based on a fixed percentage of the cost of repair is deemed the most efficient method of compensting watchmakers. Thus, watchmakers have been

paid on a one-third of the customer,s price of the watch,which price includes cost of materials and labor.In addition,the watchmaker, like the jeweler,must fully guarantee his work,that is, should the watch be returned to the watchmaker, the watchmaker must repair the watch free of charge and despite how long it takes him, he will not be compensated for it.(Special Projects)

On the other hand, with respect to jewelry repair, the cost of materials used is substantial and constitutes a substantial part of the customer,s bill.Unlike material used in watch repair,a jeweler uses precious jewels,such as diamonds, rubies, ect., and precious metal, such as gold,silver,etc., to repair jewelry.

Because of the substantial difference in the cost of materials used, it was (and is) not economically feasible nor equitable to pay jewelers on the same basis as it pays watchmakers. Therefore, Finley,s adopted a standard practice used in jewelery repair,which is the point system.

Under the point system, each type of jewelry repair is assigned a number of "points",for example, a ring sizing may be worth 4 points.As of December,1978, it was expected that a jeweler would be able to complete 12 points an hour, which was valued at $6.00.At this time, Mr.Banks averaged 18 points per hour,and thus, earned on the average of $ 9.00 per hour,plus $25.00 a week for filing parts.

4. Mr. Banks was not paid differently that the watchmakers because he was black.Mr. Banks was paid differently because he was a jeweler. Mr. Banks was paid the same way that Mr. James Doxtater,caucasion,and Ms. Pat Lewis,caucasian, the only other jewelers in the department,were paid.Mr. Banks, Mr. Doxtater,and Ms. Lewis went on the point system at the same time. It should be noted that Ms. Patricia Lewis commenced her employment with Finley,s on March 30,1970,two years before Mr. Banks was hired. She voluntarily terminated her employment on May 5, 1978 when she moved to Minnesota.Mr. James Doxtater commenced his employment in 1969.He left the

company on July 15, 1974.

5. Despite the difference in the methods of compensations between jewelers and watchmakers Mr. Banks earned more money outside of vacation pay than any of the watchmakers in the department in the period following Ms. Lewis, departure, June, 1978.Between June and November of 1978,Mr. Banks, who started in 1972,earned $8,890.00, whereas Mr.Dan Custigan, who started with the company in 1957, earned $8,134.99.The only other watchmaker during the whole period, Mr.Friederich who started with the company in 1965,earned $7,605.59.A copy of the commission report dated July,1977 through November, 1978 is attached hereto as Exhibit 3.It should be noted that even during the period from July, 1977 through May of 1978,when both Mr. Banks and Ms. Lewis were present,Mr.Banks still earned at times more money per month than several of the watchmakers.When Ms. Lewis departed, all of her work was given to Mr. Banks and the company did not hire another jeweler to replace her. Because jewelers

were paid on a piece-rate basis,Mr.Banks was able to substantially increase his salary.

6. At no time during Mr. Banks term of employmeny with Finley,s was he treated any differently than any other employee. In fact, Mr. Banks, if anything, was given special treatment. An example is when Mr. Banks was first hired,he had limited knowledge in mathmatics,specifically fractions, which made it very difficult for him to do engraveing work and for measuring gold. Accordingly, Mr.Banks was allowed to go back to MATC one day a week for a period of one year to attend a math course.During this time, he was paid for a fullweek,s work,including the day he attended school. After this course ended,Mr. Banks requested that he be allowed to continue attending technical school and he was permitted to do so at the expense of the company.No other employee was given this same opportunity nor treatment.

7. Contary to Mr. Banks assertion in his charge filed with the EEOC on or about April 3,

1980, Charge No. 055801396, Mr.Banks was not discharged from his position as jeweler.Mr. Banks Quit during a meeting that was held with Mr. Banks,Mr.Gary Freinik-Mr. Banks supervisor and myself. The meeting was held because Mr. Banks had refused to perform some repair work that had been given him by Mr.Freinik. I asked Mr. Banks that regardless of whoes error it was, he was to perform all repair work that was given him by Mr. Freinik.Mr.Banks became upset and stated that he was not going to do the job.I told him that he would have to do the job.He then stated he would quit and walk out.

8. At no time during this meeting was Mr. Banks being reprimended for refuseing to work on an assignment that was given to him by his supervisor.At no time during this meeting was Mr. Banks ask ed to perform a job that was not within his normal job duties.At no time during this meeting was Mr. Banks asked to do something that not required of all employees-Jewelers and watchmakers.At no time during this meeting was

Mr. Banks asked to resign. Mr. Banks was not terminated by the company. Rather, he voluntarily quit.

9. At no time, before or after November 28, 1978, when Mr. Banks filed his first charge with the EEOC, Charge No. 05579024-5, did the company treat him differently with respect to his terms and conditions of employment. Mr.Banks was never singled out and given "special jobs" As in the case of watchmakers,when a watch is given back tobe repaired again,the watchmaker must repair it at his cost. On March 28, Mr. Banks was given a repair order to do over again because the job was not done correctly,regardless of whose fault it was.Although it may be time consuming and without compensation, he was not given tha assignment because he is black.Rather he was given it because he was the jeweler who had worked on it previously.Mr. Banks race had absolutely nothing to do with his being given this "special" job.

Ihave read this affidavit consisting of 9 paragraphs and 5 pages and swear it is true to best of my belief. SIGN,

Robert Sadow

AFFIDAVIT

STATE OF WISCONSIN)
)SS
COUNTY OF MILWAUKEE)

I, Gerhard Freinik, being duly sworn state:

1. I was the manger of the Finley watch and jewelry repair department at Gimbels, located at 101 East Wisconsin Avenue, Milwaukee, Wisconsin Avenue, Milwaukee, Wisconsin from 1951 to July 19,1980. I an both a certified jeweler and watchmaker and am thoroughly fimilar with the duties,responsibility and compensation of both positions.

2. I was directly responsible for supervising all of the employees in my department, including jewelers Mr. Ira Banks, black,and Ms. Patricia Lewis, caucasion, who was hired March 30,1970, and Mr. James Doxtater, caucasion, who was hired in approximately 1969. Mr. Banks was hired by the company on March 14,1972,at the time he was attending school at the Milwaukee Area Technical College (MATC). He joined the

company as a jeweler apprentice, which he duly completed under my supervision and training. He was the first and only jeweler apprentice hired at the company. During Mr. Banks,period of employment, Mr. James Doxtater and Ms.Patricia Lewis was, outside of myself, the only other jeweler at Finley,s.

3. Empolyees in the jewelery department were paid on a "point system" basis, that is, each type of repair that is performed is given a certain number of points. In 1978, It was anticipated that a jeweler would earn 12 points per hour, or at a rate of $6.00 per hour.It should be noted that at one time both jewelers and watchmakers were paid on a percentage of customer,s price basis. In 1974, the cost of materaials used in watch repair became sudstantially inflated.It was therefore determined to put both jewelers and watchmakers on a point system basis - to seperate the cost of materaials from labor. The point system was bases on the normal hourly work performed by the

watchmaker and the jeweler.After approximately one year, the cost of watch repair materials stabilized, it was determined to put watchmakers on a 30% of customer price basis. The price of gold diamonds,rubies, ect.- material used in jewelry repair-were still greatly inflated and always fluctuating in price and, thus , the jewelers were kept on the point system.Mr.Banks Mr. Doxtater and Ms. Lewis, as jewelers were employed throughout the aforementioned changes in compensation systems. All three went on the system at the same time and remained on it until they left the company.

4. Jewelers were not paid on the same basis as watchmakers, because of the difference in materials that are used in the two positions, namely, the "materials" used in jewelry repair consist of preciors metal, such as gold,silver ect.And precious stones,such as diamonds, rubies, ect., are considerably more expensive then the mateaial used in watch repair.While the cost of material used in watch repair was under 10% of

the customer,s price, the cost of material used in jewelry repair could be as high as 99% of the customer,s price. Thus, putting jewelers on a percentage of the customer,s price was and is not economically feasible nor fair.The fact that Mr. Banks is black had nothing to do with the method by which he was paid and had everything to do with the fact he was a jeweler.

5. Notwithstanding the difference in the method of compensation, Mr. Banks, who commenced his employment in March,1972 as an apprentice and in 1975 as a fully qualified jeweler,earned more salary than did watchmakers who commenced their employment substantially earlier. In fact, several watchmakers had over 20 years of experience.

Between July, 1977 and May, 1978, Mr.Banks salary comparable to Ms.Lewis was able to repair more jewelry items than Mr.Banks.Both,however, were paid under the same point system formula. During this same period, Mr. Banks earned more compensation than James Greco and D. Brennan,

both of whom are watchmakers paid on 30% commission basis - and the comparable salary of A. Freiedsrich, watchmaker, all of whom had considerably more experience than Mr. Banks. (See Exhibit 1 for a detail account of the earnings of all employees in my department from july, 1977 to November, 1978.

Between the period of June, 1978 to November 1978, the period following Ms. Lewis, department from the company, Mr.Banks,earnings substantially increased. This was because all work that had been given to Ms. Lewis was transferred to him. During this period, Mr.Banks, salary surpassed A. Frederich and, on occasion ,D. Costigan. (See Exhibit 1.)

6. Both watchmakers and jewelers "guarantee" their work in the sense that if the repair in not to the satisfaction of the customer,the repair must be done over at the expense of the person doing the repair. That is, the repair is done free of charge reguardless of the time and effort involved.On or above March 14,1980,

Mr. Banks refused to accept special order and some repairs, partticularly one that involved a plate for a bracelet. A meeting was held with Mr. Sadow, the vice president of the company, on March 28,1980,to discuss Mr. Banks,refusal to repair the bracelet. At this meeting Mr. Banks became upset with the fact that Mr.Sadow had requested that he work on repairs,and he quit. at no time during the meeting nor at any time prior to the meeting did I or Mr.Sadow want to terminate Mr. Banks.

7. At no time during Mr.Banks employment at Finley was Mr. Banks treated any differently than any other employee under my supervision. in fact Mr. Banks was given a special benefit not given to other employees in that when Mr. Banks first came to Finleys, he was allowed to attend school at the expense of the company. The fact that Mr. Banks filed a charge of discrimination, charge No. 055801396,with the EEOC, had absolutely no effect on Mr. Banks, empolyment.Mr. Banks was not given any

different "special repair jobs" - jobs that are regularly given to jewelers and watchmakers as a normal part of their job - than he had received prior to the filing of his charge.

I have read the above affidavit consisting of 7 paragraphs and 4 pages and swear it is true to the best of my belief.

Signed,

_____
Gerhard Freinik

Signed and sworn to before me
this_____ day of may ,1982.

_____
Notary Public, Milwaukee County.
My Commission expires 9/16/84

COMMISSION REPORT(July 77 - Nov.78)(12-20-78)

Month	Watchmaker D.Costigan Start 7-8-58	Watchmaker A.Friedrich Start 1-11-65	Watchmaker D.Brennen Stert 5-31-77	Watch-Maker GRECO Jim Start 10-18-65
July 77	$575.00 + vac.	$475.50 + vac	$375.50	$143.00 Ill.
Aug.77	$1535.00	$1080.00	$658.50	$236.50
Sept.77	$1346.50	$649.00	$809.50	Ill
Oct. 77	$1480.25	$1084.50	$801.00	"
Nov. 77	$1434.50	$1138.50	$745.00	"
Dec. 77	$1358.50	$1304.00	$642.00	$88.00
Jan. 78	$1383.50	$990.50	$660.00	$308.50
Feb. 78	$1462.00	$1129.50	$369.00	$850.50
Mar. 78	1514.95	$1282	$760.47	$392.33
April78	$1665.73 $1645.63	$1343.98 $1451.66	$620.97 $813.74	$430.15 $226.91
May 78	$142.63	$1398.52	$785.30	$337.87
TOTAL	$16829.18	$13327.89	$8040.48	$3014.26
Jun. 78	$1247.26 + vac	$1260.11	$743.99	Ill
Jul. 78	$1521.61	$950.26	$563.26	Ill
Aug 78	$1431.95 + vac	$1525.81	$662.06	Retired

COMMISSION REPORT (July 77 - Nov. 78)(12-20-78)

Month	Watchmaker D.Costigan Start 7-8-58	Watchmaker A.Friedrich Start 1-11-65	Watchmaker D.Brennen Start 5-31-77	Watch-maker GRECO Jim Start 10-18-65
Sept.78	$1563.51 + vac	$1557.05	Exit	
Oct. 78	$702.23 + vac	$869.05		
Nov. 78	$1668.37	$1143.31		
6 Month total 4 Weeks vac pay	$8134.99 $1524	$7605.59		vac. Pay

Record 19 & 20 Exhibit 1 or 3 (Respondent Submitted Commission Report Of Watch makers employees).

COMMISSION REPORT (July 77 - Nov.78)(12-20-78)
Robert Sadow and G.Freinik

Month	Jewelry Repair I. Banks Start 3-14-72	Jewelry Repair P. Lewis Start 4-21-69	Mr. Banks Start 3-14-72 as Apprentice
July 77	$1030.50	$844.25 + vac.	
Aug. 77	$792.50	$879.50	
Sept.77	$733.50	$981.00	
Oct. 77	$618.50	$1125.50	
Nov. 77	$1003.00	$1061.00	
Dec. 77	$1013.00	$1006.00	Fine jewelry repair short of work.
Jan. 78	$930.50	$1168.00	
Feb 78	$1032.50	$1211.50	
Mar. 78	$958.00	$1037.50	
April 78	$1100.00 $918.50	$837.50 $946.50	2 Commission Checks
May 78	$183.00 + vac	$1170.00	
TOTAL	$10321.35	$12,268.25	
Jun. 78	$1567.00	Exit of Mrs. Lewis Now full time work for Mr. Banks.	
Jul. 78	$1229.00		

COMMISSION REPORT (July 77 - Nov. 78)(12-20-78)
Robert Sadow and Gerhard Freinik

Month	Jewelry Repair I. Banks Start 3-14-72
Aug. 78	$2115.00
Sept.78	$1445.00
Oct. 78	$1266.50 Plus $100 bonus equal $1366.50 ($25.00 Each week)
Nov. 78	$1092.50 Plus vacation pay $75.00 ($25.00 each week for filing and estimating).
Total	$1167.50
Total for 6 months	$8,8900.00

Record 19 & 20 Exhibit 1 or 3 (Respondent Submitted Commission report Of Jewelery Employees).

AFFIDAVIT

STATE OF WISCONSIN) SUBMISSION OF
) PRO-SAY BY PLAINTIFF
COUNTY OF MILWAUKEE)
)

Ira Banks ,affidavit in part.Record 23 page 4.

I, Ira Banks, being duly sworn state:

Stated by Mr. Gerhard Freinik and Mr. Robert Sadow that the plaintiff refused to make some repairs. (Freinik Affidavit,paragraph #6 and Sadow Affidavit, Paragraph # 7 and 8).The plaintiff did not refuse any assignments for repairs. The repair of the bracelet referred to by Mr. Gerhard Freinik(Freinik Affidavit, Paragraph # 6) was repaired by the plaintiff. The plaintiff did not refuse to repair such bracelet.

After repairs had been made by the plaintiff on the bracelet,the defendant did not compensate the plaintiff for such repairs. Noy only was the plaintiff not compensated for this particular repairs but others as well. When the plantiff requested to be compensated by the defendant the plaintiff was terminated by the defendant.

I, Ira Banks,plaintiff, request that the courts review all ststements in the affidavits of Robert Sadow, Wesley N. Harry , Patricia Lewis, and Gerhard Freinik, as inaccurate.

Ira Banks

Ira Banks

Dated This 12thDay Of July1982

Notary Public In And For The State Of Wisconsin

Residing In Milwaukee County

My Commission Expires March, 30 198

A explanation of proceeding pages 44a,b,& c. are work production sheets used each week by petitioner as a employee of respondent.This example of the amount of commission should have been paid to petitioner for his work during the week 7-27-74.As opposed to what was paid to petitioner for his work during 7-27-74.The example production sheet were used from 1974 through March 28,1980.

THIS DOCUMENT IS EVIDENTIARY HEARING EXHIBIT 6,HELD IN THIS CASE ON THIS DATE,JAN. 10,1985.

Page 44a and 44b,is information supplyed by the employee to the employer after the repair was done.Production sheet week 7-27-74 have a total of 31 repairs that week.

Reading from left to right.HORIZONTAL

The first colum is the inital of customer name who,s jewelry being repaired by the jeweler.

The second column is the numbers of the job repair envelop.(refer to J.A.21 for example.

The third column is the number of points paid to petitioner(employee).

The fourth column is the retail prices respondent charged each of its customers for serviceing the jewelry repair ect.

Week ending or Month: 7-27-7

Work Category: Fine Jewelry

Shop			CC			SR	NR /	MF		

Shop | CC | SR | NR | MF

Month: 1-21-14

MF
L 44456 5 13.00
13 44633 16 2.00
Sharp pieces 9
13 44337 15 2.50
Pickup 1.21
SALES 1.21 7.50
NSF 2.50

7 12.50

47

60

VF | ET | AP | PP

VF
SW 4 7.50

AP
C 5176 2 3.00
" 5184 7 12.50
P 5157 5 7.50
W 5134 7 12.50
A 5194 16 17.50
S 5191 5 6.50
N 5202 4 7.50

PP
Plating 81 [illegible]
45 x 3 = 81 144
[illegible] x 3 = 44.64
Polish 7.14
31 x 45 = 1455
44.64
Hang
B 34.52

4 | 7.50 | 46 | 7.00 =

E | AP | HD

E
C [illegible] 4 0.00 =

AP
[illegible] 14 2.00
[illegible] 3 4.00
[illegible] 2.00

4
15.00

Point Cut 1.00

12.00
2.00
357 x .48 = 171.36

HD
Total 1.00 1.31

Total Rush Pick Charge
140.00
702.00
842.64

30% OF 8426.5 = 2611.4

(446)

// 171.3 # 2267.79 IS 6558 96.63
83.10 405 + 96.63
Pickup 57.52

1-21-14

Jobs - 31

Ref 942.65

Units - 357

Com - 10665

357 x $166.65

Short $54.00

454 x 357 = 166.65

FINE JEWELRY REPAIR

RING SIZING	Pts.	Retail
up to 2½ mm		
Ladies gold or silver	4	$ 6.50
each additional size	1	$ 1.60
Ladies Platinum	6	$ 9.00
each additional size	2	$ 3.50
Gents gold or silver	5	$ 8.00
each additional size	2	$ 2.50
Solder (2) Rings together	5	$ 8.50
NEW SHANK		
Ladies 14K gold 2DWT	11	$ 34.50
Gents 14K gold 4DWT	15	$ 62.50 and up
Finger fit shank 2½ mm	12	$ 67.50
Finger Mate shank 2½ mm	18	$ 135.00
Knobs inside ring (2)	9	$ 25.00
Spring inside ring	12	$ 35.00
FINISHES (Rings only)		
Brush finish (No chg. w/sizing)	3	$ 3.50
Polishing " " " "	1	$ 2.50
Rhodium " " " "	3	$ 4.50
Gold Plate " " " "	3	$ 4.50
Antiquing	2	$ 3.50

Revised Jan 1974 (45)

FINE JEWELRY REPAIR

DIAMOND SETTING	Pts.	Retail
Melee up to 8 pts.	3	$ 4.75
9pts. to 1/4 ct.	5	$ 8.50
to 1/2 ct.	7	$ 12.50
to 1 ct.	9	$ 16.50
Each additional 1/4 ct.	2	$ 3.50
SET STONE GENERAL	4	$ 6.50
TIGHTEN STONE EACH	2	$ 3.75
NEW BEZEL INSTALLED UP TO 7x9	6	$ 21.00
8 x 10 and larger	6	$ 2500
SET STONE INTO BEZEL UP TO 7x9	6	$ 6.50
8 x 10 and larger	8	$ 8.75
NEW HEAD INSTALLED UP TO 8 pts.	3	$ 8.25
9 pts. to 1/4 ct.	3	$ 16.25
to 1/2 ct.	4	$ 20.75
to 1 ct.	5	$ 26.75

Over 1 ct. call for estimate

CENTER HEAD INSTALLED INTO RING

1/4 ct.	6	$ 22.00
1/2 ct.	7	$ 26.50
1 ct.	8	$ 32.50

FINE JEWELRY REPAIR

	Pts.	Retail
CEMENT PEARLS ON POSTS.....	2	$ 3.50
SET PEARL IN PRONGED HEAD.....	3	$ 4.75
TIGHTEN PEARL IN PRONGED HEAD....	2	$ 3.75
POST REPLACED FOR PEARL.....	4	$ 6.50
PRONGS REBUILT FIRST.....	5	$ 7.00
each additional prong.....	3	$ 4.00
REBUILD LUGS EACH.....	8	$ 8.75
SHORTEN GOLD MESH BAND EACH SIDE.	3	$ 8.50
DRILL PERAL.....	2	$ 3.50
Drill Onyx.....	5	$ 5.50
General Gold Soldering	4	$ 6.50
Gold colder jump ring(charms)...	3	$ 3.75
Tube for Diamond plate.....	8	$ 11.50
Diamond Plate.....	1	$ 12.50
Genunine Stones Call for estimate		
EARRING BACKS " " "		
CUFF LINK BACKS " " "		
PIN BACKS " " "		
CHAINS GOLD SOLDERED	4	$ 6.50
MASH BANDEACH SIDE	12	$ 21.50
GOLD SOLDERE HOLES IN WATCH CASE.	3	$ 3.50

REVISED JAN. 1974 (47)

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1984

IRA BANKS

PETITIONER

v.

FINLEY-SELIGMAN & LATZ, INC.,

RESPONDENT

PROOF OF SERVICE

The undersigned hereby certifies that copies of motion petition for writ or Certiorari to the Court Of Appeals For The Seventh Circuit on counsel for respondent by encloseing copys thereof in an envelop.First Class postage pre-paid, Address to

Barry L. Chaet
Kroukoski & Associates, S.C.
7111 West Edgerton Avenue
Milwaukee, WI 53220

and depositing same in the United States Mail at Milwaukee, WI .On this 15 Date of March

Ira Banks

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1984

IRA BANKS

PETITIONER

v.

FINLEY-SELIGMAN & LATZ, INC.,

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and depositing same in the United States Mail at Milwaukee, WI .On this 10 Date of ~~March~~ April

Ira Banks

Ira Banks